

# CBA COMPETITION LAW SPRING CONFERENCE

May 10, 2018 | Toronto (ON)

## COMPETITION ENFORCEMENT IN CANADA AND AROUND THE WORLD: DIVERGENCE OR CONVERGENCE?

THURSDAY, MAY 10<sup>th</sup>, 2018

8:15 – 8:55 Breakfast and Registration

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8:55 – 9:05 Welcome and Introduction

**Section Chair:** Anita Banicevic, *Partner, Davies Ward Phillips & Vineberg LLP (Toronto)*

**Conference Chair:** Antonio Di Domenico, *Partner, Fasken Martineau DuMoulin LLP (Toronto)*

9:05 – 10:20 **Revisiting the Antitrust Paradox: ‘Hipster Antitrust’ and the Limits of Antitrust**  
[1 hour – substantive content]

‘Hipster antitrust’ is challenging the mainstream approach to competition enforcement in the United States and Canada. What led to the ‘hipster antitrust’ movement, and what is its current state in the United States and Canada? Do public interest or other considerations have a place in antitrust enforcement or is the existing consumer focused approach “just right”? Our international panel of experts will debate both sides of this timely issue.

**Moderator:** Adam Fanaki, *Davies Ward Phillips & Vineberg LLP*

**Speakers:** Vicky Eatrides, *Deputy Commissioner, Competition Promotion Branch, Competition Bureau*

Deborah Garza, *Partner, Covington & Burling LLP*

Anthony Niblett, *Professor, University of Toronto Law School*

Joshua Wright, *University Professor, George Mason University and Executive Director, Global Antitrust Institute*

10:20 – 11:20 **Immunity and Leniency on the Decline?: Canadian and U.S. Perspectives**  
[1 hour – substantive content]

Immunity and leniency applications in North America appear to be on the decline. What is behind this decrease and are changes necessary to address this decline? Are class actions detracting from the attractiveness of leniency and immunity programs and are whistleblower amendments necessary? What can Canada learn from other jurisdictions and what are the practical implications of the proposed changes to the Competition Bureau’s Immunity and

Leniency Programs on the likelihood of co-operation? We will hear the latest perspectives from leading lawyers in Canada and the U.S.

**Moderator:** James Mutchnik, *Kirkland & Ellis*  
**Speakers:** Brian Facey, *Blake Cassels & Graydon LLP*  
Jim Marshall, *Deputy Chief Federal Prosecutor, National Capital Region Office, Public Prosecution Service of Canada*  
Lisa Phelan, *Chief, National Criminal Enforcement Section, Antitrust Division at United States Department of Justice*  
Ann Salvatore, *Acting Deputy Commissioner, Cartels Directorate, Competition Bureau*

11:20 – 11:35

Refreshment Break

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11:35 – 12:35

**Abuse and Monopolization in a Digital Age: New Dog or Old Tricks?**

[1 hour – substantive content]

How are emerging antitrust issues, such as big data and multi-sided platforms, impacting international perspectives in abuse of dominance/monopolization? Have recent decisions, including *TREB* and *VAA* in Canada, *American Express* in the US and *Google* in the EU increased convergence or divergence? What can we learn from developments in other jurisdictions? Our international panellists will lead a discussion of the latest jurisprudence and the implications for enforcement.

**Moderator:** Neil Campbell, *McMillian LLP*  
**Speakers:** Anthony Durocher, *Competition Bureau*  
Andrew Little, *Bennett Jones LLP*  
Lawrence Wu, *NERA Economic Analysis*

12:35– 14:00

**Lunch: Address from Commissioner Pecman**

[0.75 hours – substantive content]

**Speaker:** John Pecman, *Commissioner of Competition, Competition Bureau*

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14:00 – 15:00

**Advertising Enforcement in North America: Not Just for Advertising Anymore?**

[1 hour – substantive content]

Privacy concerns, "fake news" and "patent assertion entities" could soon be testing the limits of advertising laws and enforcement in Canada. Can and should advertising laws be used to address such issues? Are other laws and/or enforcement regimes better suited? What are the differences or similarities between the Canadian and U.S. approach? Join us for a discussion of

these hot consumer topics, as well as the latest in compliance considerations and highlights from recent cross-border deceptive marketing enforcement matters.

**Moderator:** Sandeep J. Joshi, *BMO Financial Group*  
**Speakers:** Christopher Cole, *Crowell Moring LLP*  
Lesley Fair, *Federal Trade Commission*  
Josephine Palumbo, *Deputy Commissioner of Competition, Cartels and Deceptive Marketing Practices Branch*  
Dominic Thérien, *McCarthy Tetrault LLP*

15:00 – 15:15

Refreshment Break

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15:15 – 16:15

**Role of Innovation in Merger Review: Important or Overrated?**

[1 hour – substantive content]

Innovation considerations have played an increasingly prominent role in a number of merger reviews. *Dow/Dupont* and *Bayer/Monsanto* are but two recent examples. Is this approach in these reviews unique to the EU? What role does innovation play in merger review in Canada and the U.S.? As multijurisdictional merger review and scrutiny of international transactions continues to grow, what are the lessons and implications if any from other jurisdictions?

**Moderator:** Shuli Rodal, *Osler Harkin Harcourt LLP*  
**Speakers:** Rafique Bachour, *Partner, Co-Head of Industrials Group*  
Susan Hutton, *Stikeman Elliott LLP*  
Paul Johnson, *T.D. Macdonald Chair, Competition Bureau*  
Elliot Silver, *Skadden, Arps, Slate, Meagher & Flom LLP*

16:15 – 18:00

Networking Reception

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